

ANALYSIS OF HOUSE BILL 4911

House Bill 4911 covers the following hypothetical. Mother has a child out of wedlock and wishes to give the child up for adoption and claims that she cannot identify the father of the child.

1. The role of the judiciary and integrity of the judicial process may be compromised in these types of hearings which involve the termination of a person's fundamental constitutional rights to parent one's child.
 - a. All of the parties participating in these hearings have a vested interest and benefit from the completion of the adoption.
 - 1) Birth mother:
 - a) She will no longer be responsible for the child;
 - b) She will receive financial assistance for living expenses during and shortly after the birth;
 - c) She may be avoiding possible Child Protective Services involvement if she or the child tests positive for controlled substances, or other neglect is observed that could impact her other children if she has any*;
 - d) She may be avoiding possible criminal prosecution for child abuse if the child is born positive for controlled substances, or other neglect is observed*; and
 - e) If the father is unaware of the child's birth and is never made aware of such, it is easier for birth mother to control the outcome of the hearing and place the child for adoption. There is no risk of interference by the father who if advised may decide to be a dad which would stop the adoption process.

*Noteworthy, Child Protective Services tends not to petition against the mother for abuse and neglect if an adoption is in process, even if the child is born positive for a controlled substance.

- 2) Child placing agency:
 - a) There exists a significant financial incentive to the child placing agency if the adoption is completed. The amount of money a child placing agency charges for a direct placement adoption ranges from \$10,000 to \$30,000 per case.
 - 3) Attorney for birth mother:
 - a) The attorney who represents birth mother has a legal relationship to represent birth mother's interests to give the child up for adoption.
 - b) The attorney's role is contrary to that of the court which is to ensure the integrity of the judicial process through probing questioning.

b. Court's role:

- 1) Ensure the integrity of the judicial process in a hearing to terminate the parental rights of a mother and allegedly unknown father.
- 2) Ascertain the veracity of the statements made by the birth mother as well as her credibility in determining the identification of a father.
- 3) Determine if the mother is freely and voluntarily giving the child up for adoption. Especially, in cases where a strong outside influence is present if the adoption is not completed; such as, family, Child Protective Services, Child Placing Agency, etc.
- 4) Determine if a known father exists and make sure that father is provided notice and an opportunity to respond before his parental rights are terminated.

c. The impact of the House bill 4911 on the Court's role:

- 1) The Court will be nearly stripped of its discretion to hold a hearing and fulfill its role of ensuring the integrity of a proceeding involving the termination of parental rights of a mother and father.
- 2) The Court has no active role in the process except when the documentation after a first and second submission is insufficient and then the court requests a hearing.
- 3) The insufficient affidavits or written declarations would cause longer delays in the processing of these types of adoption cases.
- 4) Assuming a transcript of testimony is included with the out of court consent, the judicial process is dictated by the questioning or lack thereof by birth mother's counsel. The above noted conflict impairs the integrity of the judicial process.

2. Solution:

- a. The word "shall" be changed to "may" in the second and third sentences of MCL 710.36(6), as follows:

IN LIEU OF THE MOTHER'S LIVE TESTIMONY, THE COURT **MAY** RECEIVE AN AFFIDAVIT OR A VERIFIED WRITTEN DECLARATION FROM THE MOTHER AS EVIDENCE OF THE IDENTITY AND WHEREABOUTS OF THE CHILD'S FATHER.

IF THE COURT DETERMINES THAT THE AFFIDAVIT OR VERIFIED WRITTEN DECLARATION IS INSUFFICIENT, THE COURT **MAY** ALLOW AMENDMENT OF THE AFFIDAVIT OR VERIFIED WRITTEN DECLARATION.

- b. This would give court's discretion to accept out of court affidavits in such matters when the affidavits and evidence submitted support such. It would also preserve the court's role to promptly hold a hearing and flush out any concerns that threaten the integrity of the judicial process when the affidavit and evidence submitted dictate a hearing is necessary.
- c. Keeping the word "shall" in the second and third sentences of MCL 710.36(6), would cause untimely delays in those cases where the first submission of document(s) is insufficient. An even longer delay would occur if the second submission of document(s) remains insufficient or the case involves concerns that necessitate a hearing. The delays would act contrary to the efficient resolution of adoption cases.